

SHELL COMPANIES AND BENAMI TRANSACTIONS AS TOOLS OF MONEY LAUNDERING

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Abstract

Money laundering frequently depends on the separation of visible legal ownership from effective economic control. Shell companies and benami arrangements can facilitate that separation, yet neither the existence of a thinly capitalised company nor every third-party property holding establishes criminality. This doctrinal paper examines how opaque corporate structures, nominee ownership, layered payments and concealed beneficial interests may be employed to disguise proceeds of crime. It analyses the Prevention of Money-Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988, company-law disclosure obligations and international beneficial-ownership standards. Particular attention is paid to the distinction between predicate criminality, laundering, benami property and legitimate commercial structuring; evidentiary reconstruction of ownership and control; enforcement coordination; and procedural fairness. The paper argues that an effective response requires verifiable beneficial-ownership information, transaction-level financial intelligence, proportionate scrutiny and careful judicial separation of suspicion from proof. It proposes integrated but legally bounded information sharing, stronger verification of nominee relationships, targeted professional due diligence and improved tracing of cross-border corporate layers.

Keywords: Shell companies; Benami transactions; Money laundering; Beneficial ownership; Financial investigation; PMLA.

Introduction

Money laundering is not merely the physical movement of illicit funds. It is a process by which the origin, ownership, location or intended use of criminal proceeds is obscured so that the assets appear disconnected from unlawful conduct. Corporate personality and property-holding arrangements can serve legitimate commercial needs, but they can also supply the distance between the person directing a transaction and the person whose name appears in formal records. That distance creates a central challenge for investigators: establishing who actually supplied the funds, exercised control and enjoyed the benefit. The inquiry must begin with evidence, rather than the assumption that an unusual corporate structure is itself criminal.¹

A shell company is commonly understood as an incorporated entity with little substantial independent operation. Such entities may be used for lawful purposes, including holding assets, facilitating reorganisations and managing investments. Risk emerges when the entity becomes a conduit for invoices unsupported by commercial performance, circular payments, concealed controllers or rapid transfers among related parties. Benami transactions raise a related but distinct problem: legal title or apparent possession may stand in the name of one person while another provides consideration and obtains the beneficial advantage. The two mechanisms can be combined, but they are not interchangeable legal categories.²

The Indian legal response operates through several overlapping systems: anti-money-laundering criminal law, benami-property regulation, company disclosures, customer due diligence and financial intelligence. A sound doctrinal account must explain the function and limits of each. The central proposition advanced here is that transparency is a necessary investigative tool, not a substitute for proving statutory elements.³

The conceptual distinction between legal and economic ownership has consequences for research design. A study restricted to incorporation data may count entities without measuring concealment. A study restricted to suspicious transaction reports may describe alerts without establishing adjudicated wrongdoing. A defensible legal analysis therefore distinguishes indicators, investigative findings and judicial determinations. The same distinction should inform public debate about enforcement outcomes. Without it, broad claims about the prevalence of shell-company laundering can appear more certain than the underlying evidence permits.

¹The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, Statement of Objects and Reasons (India).

²Financial Action Task Force, Guidance on Transparency and Beneficial Ownership (2014), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Transparency-and-beneficial-ownership.html>.

³Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (2023), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>.

Research Problem, Objectives and Method

The research problem is the gap between formal documentation and actual economic control. Registration records may identify shareholders and directors without fully revealing the person who finances or directs a transaction. A property deed may establish a registered holder without resolving the source of consideration. Conversely, a suspicion arising from unusual transfers cannot by itself prove that assets are proceeds of a scheduled offence. The difficulty is therefore simultaneously informational, legal and institutional.⁴

This paper has four objectives: to identify the mechanisms through which shell companies and benami arrangements can obscure beneficial ownership; to examine the statutory thresholds for action under Indian law; to evaluate the evidentiary and institutional problems in tracing concealed control; and to propose safeguards that improve detection without treating legitimate entities or third-party holders as presumptively culpable.⁵

The methodology is doctrinal and analytical. Primary materials comprise Indian statutes, judicial decisions and rules governing beneficial ownership and reporting. Secondary materials comprise Financial Action Task Force guidance and international research on the misuse of corporate vehicles. A functional comparison is used only to illuminate transparency standards, not to transplant foreign legal rules. No interviews, survey findings, enforcement statistics or invented case studies are claimed. Conclusions are normative deductions from the examined legal framework.⁶

A further methodological limitation concerns the changing statutory and regulatory environment. Rules governing disclosure, reporting and procedural rights may be amended, while judgments may be reconsidered or distinguished. For this reason, doctrinal conclusions are necessarily tied to the versions of instruments and precedents actually examined. The present study does not infer causal effectiveness from legislation alone: whether disclosure reduces laundering in practice would require longitudinal data, enforcement records and empirical validation beyond the scope of a doctrinal paper.

How Shell Companies Facilitate Concealment

The most consequential feature of a shell structure is the potential disconnection between legal form and commercial substance. Multiple entities may be placed between the original source of funds and the ultimate asset. Funds can pass through accounts associated with related companies, accompanied by descriptions such as consultancy fees, loans, advances or investments. Such labels may be entirely genuine. Their evidentiary value depends upon contracts, actual services, counterparties, timing, capacity and contemporaneous records. Investigators must therefore test commercial explanations instead of inferring wrongdoing from corporate complexity alone.⁷

Layering may be reinforced by nominee shareholders or directors, shared addresses, repeated intermediaries and transfers across jurisdictions. Each layer can make identification of the natural person exercising effective control more difficult. The Financial Action Task Force has accordingly emphasised access to adequate, accurate and up-to-date beneficial-ownership information. A registry entry alone may not resolve the problem when information is self-reported, outdated or not verified against other reliable sources.⁸

Practical scrutiny should focus on patterns rather than labels: unusually rapid fund circulation, transactions lacking an intelligible business purpose, mismatches between a company's declared activity and payment flows, or common control over purportedly independent counterparties. These are investigative indicators, not conclusive legal presumptions. The distinction matters because shell entities also arise in legitimate group structures and early-stage businesses.⁹

Illustratively, a company may receive a payment described as an advance, transfer a similar amount to an associated entity and then fund an asset purchase. That sequence warrants examination of underlying contracts, repayment obligations, pricing, beneficial ownership and the commercial reason for the transfer. It does not prove laundering merely because the transfers are consecutive. Alternative explanations, including treasury management or intra-group financing, must be tested. The analytical discipline is to document what each record proves and which disputed inference remains unsupported.

⁴The Prohibition of Benami Property Transactions Act, 1988, No. 45 of 1988, s. 2(9) (India).

⁵The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, ss. 2(1)(u), 3 (India).

⁶Financial Action Task Force, The FATF Recommendations, Recommendation 24 (as amended 2022).

⁷Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (2023), *supra* note 3.

⁸Financial Action Task Force, Guidance on Transparency and Beneficial Ownership (2014), *supra* note 2.

⁹The Prohibition of Benami Property Transactions Act, 1988, No. 45 of 1988, s. 2(9) (India).

Benami Transactions and Concealed Property Interests

Benami arrangements concern the relationship among title, consideration and benefit. Section 2(9) of the Prohibition of Benami Property Transactions Act, 1988 provides a statutory definition containing specified categories and exclusions. Accordingly, not every purchase in another person's name is benami. The precise source of funds, the parties' relationship, the intended benefit and the statutory exceptions must be considered together. A lawful family or fiduciary arrangement cannot be mechanically equated with a device for concealing illicit wealth.¹⁰

Where property is purchased with funds routed through a corporate intermediary and title is held by a nominee, the documentary chain may disguise both the financier and the intended beneficiary. The investigative task is to reconstruct the flow from original funds through intermediary accounts to acquisition and subsequent enjoyment. Property-tax payments, loan servicing, possession, rent receipts, instructions to agents and correspondence may be relevant, although none should be treated as universally decisive.¹¹

Benami regulation and money-laundering law have different statutory triggers. Benami liability is not automatically established by proving a money-laundering offence, and a benami finding does not dispense with the PMLA requirement to connect the property with criminal proceeds as defined by that statute. The separation of these elements is essential to fair adjudication and to avoiding duplicative assumptions.¹²

The benami inquiry also benefits from separating the moment of acquisition from subsequent conduct. A person may supply consideration while another is registered as owner; later possession or management can support an inference about intended benefit, but its significance depends on the whole transaction. Changes in family relationships, gifts, fiduciary duties and recognised exceptions may alter the legal classification. A well-reasoned decision should identify the relevant statutory limb and explain why any asserted exclusion does or does not apply on the established facts.

The Prevention of Money-Laundering Act, 2002

Section 3 of the Prevention of Money-Laundering Act, 2002 criminalises specified involvement with proceeds of crime in the manner defined by the statute. Section 2(1)(u) defines proceeds of crime by reference to property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, including the statutory treatment of value. Thus, an opaque company or undisclosed beneficial interest is not independently sufficient to establish the offence. The underlying connection to proceeds of crime remains central.¹³

Investigations involving layered companies require careful separation of three questions: whether a scheduled criminal activity generated the relevant property; whether the identified assets satisfy the statutory definition of proceeds; and whether the accused engaged in conduct attracting section 3. Company records, banking trails and beneficial-ownership data may answer different parts of that inquiry. Treating a suspicious transfer as simultaneously proving all three would weaken the reasoning process.¹⁴

The PMLA also contains mechanisms for provisional attachment, adjudication, confiscation, summons and prosecution, subject to statutory conditions and judicial supervision. Their practical value is substantial where assets can be dissipated through corporate layers. Equally, coercive powers must remain linked to recorded reasons, lawful procedure and the distinction between investigation and final guilt.¹⁵

Another recurring issue is the treatment of substituted or equivalent assets. Financial flows can be transformed through successive purchases, transfers and changes in asset form. The statutory definition of proceeds of crime must guide any attempt to connect later property to the original scheduled criminal activity. Investigators should specify whether the theory rests on direct derivation, indirect derivation or a legally recognised value-based basis. The legal characterisation should be articulated rather than assumed from the fact that the property is valuable or held through intermediaries.

¹⁰Id., s. 2(9), statutory exclusions.

¹¹Id., ss. 24, 26, 27.

¹²The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, s. 2(1)(u) (India).

¹³Id., s. 3.

¹⁴Id., ss. 5, 8.

¹⁵Id., ss. 17, 19, 50.

Company Law and Beneficial-Ownership Disclosure

Corporate law provides an additional transparency architecture. The Companies Act, 2013 recognises the difference between the person entered as a registered holder and the person who has a beneficial interest in shares. Sections 89 and 90 address declarations of beneficial interests and significant beneficial ownership, supported by relevant rules. These mechanisms can help investigators connect formally separate shareholdings with individuals exercising influence or control.¹⁶

However, the usefulness of disclosure depends on the quality and timeliness of underlying information. Complex chains, informal nominees and changes in control can frustrate purely formal compliance. The presence of a declaration should be tested against voting arrangements, financing, decision-making and other credible records. Conversely, a disclosure discrepancy may warrant inquiry without necessarily establishing laundering or benami ownership.¹⁷

Beneficial-ownership transparency is most effective when corporate registers, financial institutions and competent authorities can reconcile inconsistencies through lawful channels. The design should permit rapid access for authorised investigations while protecting sensitive personal and commercially confidential information from indiscriminate exposure.¹⁸

Compliance design should recognise that beneficial ownership is not always captured by a single shareholding percentage. Contractual rights, voting arrangements, layered ownership and effective influence may matter under the applicable definition. Yet the existence of influence does not automatically establish unlawful purpose. Verification requires consistency checks across declarations and independently available records. A defensible system also needs mechanisms for rectification when a person has been incorrectly identified, because inaccurate registers can generate both investigative errors and reputational harm.

Financial Institutions, Due Diligence and Detection

Financial institutions occupy a critical position because company formation and property acquisition frequently depend on payment infrastructure. Customer due diligence, ongoing monitoring and reporting of suspicious transactions are designed to help identify customers and the natural persons behind them. The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 and applicable regulatory directions establish important compliance obligations. Effective implementation requires more than collecting identity documents at account opening.¹⁹

An account may be opened with apparently complete records while its activity later departs sharply from its stated purpose. Risk-based monitoring should consider transactional velocity, unexplained transfers among related entities, source-of-funds anomalies and the absence of supporting commercial documents. The resulting alert is a prompt for investigation; it is not a judicial finding. Reporting institutions should avoid treating nationality, profession or ordinary corporate layering as standalone proof of misconduct.²⁰

Professional intermediaries may also possess important information about incorporation, property transfers and beneficial arrangements. Their duties must be specified by applicable law and professional rules. Proposals for stronger due diligence should therefore identify the persons covered, the transactions triggering scrutiny, confidentiality limits and routes for legitimate disclosure.²¹

Banks and other reporting entities face a practical tension between detecting risk and preserving ordinary access to financial services. Overly broad rules may lead to defensive account closures, excessive requests for documents or disproportionate scrutiny of smaller enterprises. Risk-based supervision should therefore consider transaction context and permit proportionate escalation. Information shared with investigators should retain provenance and relevant qualifications. A suspicious-activity report is an intelligence product; the facts supporting prosecution still require lawful collection, verification and evaluation under the applicable evidentiary framework.

¹⁶The Companies Act, 2013, No. 18 of 2013, s. 89 (India).

¹⁷*Id.*, s. 90.

¹⁸Companies (Significant Beneficial Owners) Rules, 2018 (India).

¹⁹Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (2023), *supra* note 3.

²⁰The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (India).

²¹The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, s. 12 (India).

Evidentiary Reconstruction and Forensic Accounting

Financial reconstruction should move from isolated documents to a coherent account of control and benefit. Investigators may begin with bank statements and ledgers, then reconcile invoices, loan agreements, company resolutions, tax records, property documents and communications. Chronological mapping can reveal whether money moved before or after a purported business transaction and whether the stated commercial purpose is supported by objective evidence.²²

Forensic accounting can distinguish the source of consideration from the registered owner of an asset. It can also identify round-tripping, related-party transfers and circular transactions, while remaining attentive to legitimate explanations. Digital records should be preserved with reliable provenance, appropriate chain-of-custody documentation and attention to admissibility requirements. A diagram of fund movements is useful only if every material link is traceable to underlying records.²³

Criminal adjudication demands particular caution in attributing knowledge and participation. A director's designation, a shareholder's presence in a register or a family connection may be relevant, but personal culpability must be analysed under the applicable legal standard. Investigative convenience cannot replace proof of an individual's legally relevant conduct and mental element.²⁴

A reliable financial narrative must distinguish observed transactions from reconstructed hypotheses. Analysts should identify gaps caused by unavailable records, incomplete cross-border responses or uncertain nominee relationships. The final report should make those limitations explicit and should avoid presenting a plausible flow diagram as an exhaustive account of events. Independent review of calculations, consistent currency conversion and clear treatment of dates can prevent elementary errors from becoming substantive allegations. Such practices strengthen both prosecution evidence and the ability of the defence to test it.

Judicial Interpretation and Procedural Safeguards

The Supreme Court's decision in *Vijay Madanlal Choudhary* considered the structure and constitutional challenges relating to important PMLA provisions. Later decisions have addressed procedural safeguards in arrest and enforcement. These judgments illustrate that the strength of anti-laundering powers is inseparable from the obligation to apply statutory preconditions and preserve meaningful legal remedies.²⁵

Benami jurisprudence requires similar care. The Supreme Court's 2022 decision in *Union of India v. Ganpati Dealcom* concerning the 2016 amendment was recalled in review in October 2024; it should not be cited as an unqualified continuing statement of law. The episode demonstrates why a contemporary doctrinal paper must distinguish the history of a ruling from its present precedential status.²⁶

The rule-of-law concern is not simply whether authorities can discover concealed ownership, but whether the evidence is tested through fair processes. Notices, access to relevant material, reasoned orders and judicial review help prevent the collapse of investigative suspicion into automatic deprivation of property or liberty.²⁷

Judicial supervision is particularly important where attachment occurs before the ultimate criminal question is resolved. Property restraints may affect employees, creditors, family members and unrelated counterparties. A proportionate legal process should distinguish the alleged beneficial controller from innocent persons with documented interests and should provide meaningful opportunities to challenge factual premises. Equally, effective remedies must not make asset preservation impossible where statutory thresholds are met. The objective is principled calibration of investigative urgency against the rights of persons affected.

International Standards and Cross-Border Complexity

Cross-border structures increase the difficulty of determining the ultimate natural person who controls assets. Companies may be incorporated in different jurisdictions, hold shares through intermediaries or use service providers whose records are fragmented. Domestic registers may therefore show only the immediate legal owner.

²²Financial Action Task Force, The FATF Recommendations, Recommendations 10, 20 (as amended).

²³Financial Action Task Force, Guidance on Transparency and Beneficial Ownership (2014), *supra* note 2.

²⁴The Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, ss. 61–63 (India).

²⁵The Companies Act, 2013, No. 18 of 2013, ss. 89–90 (India).

²⁶*Vijay Madanlal Choudhary v. Union of India*, (2022) 10 S.C.C. 386 (India).

²⁷*Pankaj Bansal v. Union of India*, (2024) 7 S.C.C. 576 (India).

Cooperation among financial intelligence units, competent authorities and foreign registries becomes essential, subject to domestic law and applicable arrangements.²⁸

The FATF's revised Recommendation 24 and its 2023 guidance stress adequate, accurate and up-to-date information about beneficial owners of legal persons. Recommendation 25 and the 2024 guidance address transparency of legal arrangements, including trusts. These materials provide useful benchmarks for assessing whether a system merely collects declarations or can verify and retrieve them efficiently.²⁹

International standards nevertheless require contextual application. Transparency measures should be proportionate to risk, workable for legitimate enterprises and compatible with domestic privacy and procedural protections. The objective is to reduce anonymity that facilitates criminal misuse, not to prohibit ordinary corporate structuring.³⁰

International cooperation encounters differences in legal definitions, registry architecture and access rights. An investigator may identify an immediate shareholder in one jurisdiction while the relevant trust or controlling individual is recorded elsewhere. Requests for information must be specific enough to permit useful responses and should preserve the reliability of documents received. Domestic authorities should resist assuming that foreign incorporation alone indicates wrongdoing. The legally relevant issue is whether the structure conceals criminal proceeds or relevant control, established through admissible evidence.

Findings and Recommendations

The analysis yields four findings. First, shell companies and benami arrangements can be mutually reinforcing mechanisms of concealment, but each has legitimate or legally distinct forms that require careful classification. Second, beneficial-ownership information is a starting point rather than a complete evidentiary solution. Third, effective enforcement depends on connecting corporate and property records to transaction-level evidence and the statutory requirements of the relevant offence. Fourth, legal safeguards enhance, rather than obstruct, the reliability of financial investigation.³¹

India should prioritise verification of significant beneficial-ownership declarations through risk-based reconciliation with credible corporate and financial records. Investigative authorities should adopt structured financial-tracing templates recording source, destination, controller, commercial explanation and supporting document for each material transfer. Coordination among company registries, reporting entities, benami authorities and anti-laundering investigators should use clear access permissions, audit logs and correction procedures.³²

Professional training should emphasise the distinction between red flags and proof, the legal limits of information requests and the need to investigate exculpatory explanations. Courts should receive clear, source-linked fund-flow analyses rather than unexplained charts. Legislative or regulatory refinements should be evaluated for effectiveness, compliance burden, data security and proportionality before being adopted.³³

The recommendations should be assessed against measurable implementation criteria. These include the timeliness of ownership updates, the proportion of material discrepancies resolved, the ability to trace a transaction across entities, and the availability of review for erroneous classifications. Evaluation should also account for administrative costs and the effects on lawful businesses. Such metrics would allow future empirical research to test whether improved transparency actually strengthens prosecutions and asset recovery, rather than merely increasing the quantity of collected information.

Conclusion

Shell companies and benami transactions can make money laundering harder to detect by placing legal distance between assets and their effective controllers. The solution is neither blanket suspicion of corporate structures nor an exclusive reliance on registration formalities. It is a legally disciplined reconstruction of money, ownership, control and benefit, undertaken within the specific requirements of the PMLA, benami legislation and company law.³⁴

²⁸Union of India v. Ganpati Dealcom Pvt. Ltd., 2024 INSC 799 (India) (review order recalling the 2022 judgment).

²⁹The Constitution of India, arts. 14, 21.

³⁰Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (2023), *supra* note 3.

³¹Financial Action Task Force, Guidance on Beneficial Ownership and Transparency of Legal Arrangements (2024), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html>.

³²Financial Action Task Force, The FATF Recommendations, Recommendations 24–25.

³³The Companies Act, 2013, No. 18 of 2013, s. 90 (India).

³⁴The Prevention of Money-Laundering Act, 2002, No. 15 of 2003, ss. 3, 5, 8 (India).

India's existing framework contains important investigative and disclosure mechanisms. Its continuing challenge is to ensure that information is accurate, accessible, interoperable and capable of being tested in adversarial proceedings. A balanced approach—combining verified beneficial ownership, financial forensics, institutional cooperation and procedural fairness—offers a stronger response to laundering risks while preserving legitimate economic activity and constitutional protections.³⁵

The broader contribution of this inquiry is a framework for separating corporate opacity from criminal responsibility. Transparency can expose a hidden relationship, forensic accounting can reconstruct a payment chain, and substantive law can determine whether that chain satisfies the elements of an offence. None of those steps can safely substitute for the others. An effective legal regime therefore depends on their coordination and on courts demanding clear reasoning at every stage, from initial suspicion to final determination.

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³⁵Financial Action Task Force, Guidance on Beneficial Ownership of Legal Persons (2023), *supra* note 3.